

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
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 Plaintiff,)
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 vs.) No. 4:09CR393-DJS
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MARILYN DENISE BROWN,)
)
)
 Defendant.)

ORDER

Now before the Court is the report and recommendation of the United States Magistrate Judge [Doc. #48], recommending the denial of defendant Brown's motion to suppress statements [Doc. #37]. Defendant has filed objections to certain findings of the magistrate judge. Pursuant to 28 U.S.C. §636(b)(1)(C), this Court undertakes *de novo* determination of those aspects of the report or specified proposed findings to which objection is made. Defendant specifically objects to the findings that defendant was read, and knowingly and voluntarily waived, her Miranda rights; that her statements to police were voluntary; and that she did not ask to speak to an attorney. In considering these matters *de novo*, the Court has listened to the evidentiary hearing held before the magistrate judge on July 2, 2009.

This Court's conclusions are as follows. The evidence showed that Detective Anderson advised defendant of her Miranda

rights, that defendant acknowledged understanding her rights and that defendant nonetheless agreed to be interviewed. The record would not support and there is no suggestion that defendant is other than a competent adult of at least average intelligence. She was known to Detective Anderson to be a corrections officer. The Court readily determines that defendant was properly advised of, but knowingly and voluntarily waived, her rights under Miranda.

Similarly, the record does not support defendant's challenge to the voluntariness of her statements during Detective Anderson's interview. No actual or threatened force, no verbal threats and no other coercion were applied to obtain defendant's statements during an interview in which she was not restrained in any way and appeared calmly cooperative. The Court makes a *de novo* finding on the evidence presented that defendant Brown's statements were voluntarily made.

Finally, defendant challenges the determination that she did not ask to speak to an attorney. The credibility of Detective Anderson's testimony to that effect has not been effectively challenged, and the Court finds that defendant, although advised of her right to counsel, did not exercise that right and did not request counsel at any time before or during her interview by Detective Anderson.

Upon careful consideration, and upon *de novo* review of the evidence presented,

IT IS HEREBY ORDERED that defendant's objections to the magistrate judge's report and recommendation [Doc. #51] are overruled.

IT IS FURTHER ORDERED that the report and recommendation of the United States Magistrate Judge [Doc. #48] is accepted and adopted in its entirety.

IT IS FURTHER ORDERED that defendant Brown's motion to suppress statements [Doc. #37] is denied.

Dated this 6th day of August, 2009.

/s/Donald J. Stohr
UNITED STATES DISTRICT JUDGE